

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before:

Chairman Gleiman, Vice Chairman LeBlanc,
Commissioners Covington, Goldway, and Omas

Periodicals Classification Change

Docket No. MC99-3

OPINION AND
RECOMMENDED DECISION



Washington, DC 20268-0001
June 23, 1999

I. INTRODUCTION AND PROCEDURAL HISTORY

On April 9, 1999, the Request of the United States Postal Service for a Recommended Decision on Periodicals Classification Change (Request) was filed with the Postal Rate Commission in accordance with 39 U.S.C. § 3623 and the Commission rules of practice and procedure. The Postal Service filed this Request in order to provide a remedy for a rate anomaly inadvertently arising from the last omnibus rate case, Docket No. R97-1, that affects a small number of mailers of Nonprofit and Classroom Periodicals. For certain publications, the rates available in the Nonprofit and Classroom rate schedules (423.3 and 423.4, respectively) generate higher postage amounts than the rates available in the Regular rate schedule.

This anomaly was the subject of a February 24, 1999 letter from Chairman John McHugh of the U.S. House of Representatives Subcommittee on the Postal Service to both the Commission and the Board of Governors, asking for review of the situation and report on a possible solution. See Office of Consumer Advocate Response to Motion of United States Postal Service for Expedition and to Forego Hearings as Provided for in P.O. Ruling No. MC99-3/1 (OCA Response), May 7, 1999, at 2. The Postal Service Request responds by proposing a classification change that would allow Nonprofit and Classroom subclass mailings to use the Regular rate schedule when such use would reduce the publication's postage. Request at 1. The Service also announced a refund procedure retroactive to April 9, 1999, the date this docket was initiated, for publications that pay the anomalous rate while this Request is under consideration. *Ibid.*, n. 2.

The Request was accompanied by a Motion of the United States Postal Service for Expedition and for Waiver of Certain Provisions of Rule 64(h) (Postal Service Motion for Expedition and Waiver). The Service asked for waiver of the requirement to provide the information specified in Commission Rules 64(d), 64(h), 54(f)(2) and (3), and

54(h)-(j), to the extent they apply.¹ Postal Service Motion for Expedition and Waiver at 6. In support of the waiver, the Service contended that the limited nature and applicability of the proposed changes would make no fundamental change in any classification or fee requested, and would have a very restricted impact on the revenues and costs of both the affected Periodicals subclasses and the system as a whole. *Id.* at 6-8.

On April 12, 1999, the Commission issued Notice and Order on Request for Recommended Decision on Periodicals Classification Change which announced an inclination to expedite the case "absent a request for a hearing on a genuine issue of material fact." PRC Order No. 1237 at 4 (April 12, 1999); 64 FR 18946-47. Of the ten parties seeking intervention in this case,² as well as the OCA, only one participant, the National Federation of Nonprofits (NFN), requested a hearing. Request of the National Federation of Nonprofits for Permission to Intervene, and Request for a Hearing (NFN Request), April 28, 1999, at 1. NFN argued that the Postal Service refund procedure to be instituted to address the rate anomaly should have a retroactive start date of January 10, 1999 (the effective date of the rates at issue), rather than the Service's chosen date of April 9, 1999 (which corresponds to this case's filing). *Ibid.*

On May 3, 1999, the Commission conducted a prehearing conference for Docket No. MC99-3, at which the Postal Service's motion for waiver was granted. Tr. 1/10. NFN also renewed its request for an evidentiary hearing at the conference, indicating an interest in cross-examination of Postal Service witness Taufique, as well as presentation of a direct case concerning the effective date of the Service's refund procedure. Tr. 1/12. The Postal Service opposed this request, arguing that witness

¹ Rule 64(h)(3) provides that the requirements may be waived if the Commission determines that proposed changes in the classification schedule do not significantly change rates and fees or cost-revenue relationships referred to in the rule.

² The Coalition of Religious Press Associations subsequently withdrew from the case, citing the limited scope of the proceeding. Notice of Withdrawal of Intervention by the Coalition of Religious Press Associations, May 10, 1999.

Taufique's testimony is not germane to the issue of the retroactive start date of the refund procedure, and that in any event, the Commission lacked jurisdiction over the refund matter as it is an operational decision of Postal Service management.

Tr. 1/15-16.

P.O. Ruling MC99-3/1, May 3, 1999, construed the Postal Service's prehearing conference objection as a motion to proceed without evidentiary hearings in this docket. The ruling directed interested participants wishing to respond to that motion to individually address the separate issues of the relevance of cross-examination of witness Taufique and the NFN request to present a direct case on the effective date of the proposed postage refunds. P.O. Ruling MC99-3/1 at 2. It also certified the motion to the full Commission pursuant to Rule 32, as a matter involving important questions of law and policy. *Id.* at 2-3.

Three parties responded to P.O. Ruling MC99-3/1, with the Postal Service thereafter submitting comments on one of the responses. NFN again requested discovery and hearings in order to compare costs for the Nonprofit, Classroom and Regular subclasses, and to determine whether the refund procedure offered by the Postal Service should be retroactive to January 10, 1999, rather than the proposed date of April 9, 1999. Response of the National Federation of Nonprofits to Commission Ruling on Postal Service Motion for Expedition and to Forego Hearings (NFN Response), May 5, 1999, at 1. The Advertising Mail Marketing Association (AMMA) suggested hearings would not be necessary in this instance, as the issue of whether the refunds should be available from January 10, 1999 is a legal matter, not a factual question. Response of the Advertising Mail Marketing Association to Postal Service Motion to Forego Hearings (AMMA Response), May 7, 1999, at 2. AMMA further commented that the Commission could at the very least advise the Board of Governors to extend the refund program to the parties' generally preferred January 10, 1999 date, as the Governors' exclusive discretion is predicated on the notion that the rates are

valid in the first instance, which is not the present case due to the rate anomaly. *Id.* at 4.

Both OCA and the Postal Service disputed AMMA and NFN's positions on the issues, further agreeing that the docket should proceed expeditiously without unmerited evidentiary hearings. See OCA Response at 3, 6-7; Comments of the United States Postal Service on AMMA Pleading Regarding the Need for Hearings in this Docket (Postal Service Comments), May 10, 1999, at 2-3. The Postal Service argued in part that 39 U.S.C. § 3625(f) confers power on the Governors to set the effective date for new or revised rates and classifications, and gives no authority to the Commission to limit the timing of implementation as part of its formal recommended decision. *Ibid.*

On May 14, 1999, the Commission granted the Postal Service's motion to proceed without evidentiary hearings. PRC Order No. 1243 at 9. The Commission held that witness Taufique's testimony is not germane to the primary issue raised by several participants — the effective date of the retroactive refunds — and consequently would be unnecessary at an evidentiary proceeding in this docket. *Id.* at 6. It also found "no compelling rationale to support hearings on the relative costs of processing and delivering Nonprofit and Classroom Periodicals versus Regular rate Periodicals, as requested by NFN." *Ibid.* Likewise, an evidentiary hearing on the appropriate effective date for postage refunds was deemed unnecessary, as the issue involves a matter of law (the Commission's jurisdictional authority regarding Service refunds), not a question of fact. *Id.* at 7-8. Accordingly, participants were directed to submit briefs, if desired, "challeng[ing] the Service's contention that both the plain language of 39 U.S.C. § 3625(f) and the relevant case law indicate that the Commission has no authority to include as part of its recommended decision any limitation on the timing of rate implementation." *Id.* at 9.

Initial briefs were due on or before May 24, 1999, with reply briefs due on or before June 2, 1999. P.O. Ruling MC99-3/2 (May 14, 1999). Five participants submitted initial briefs, with two participants filing reply briefs.

II. POSTAL SERVICE PROPOSAL, INTERVENOR RESPONSE AND COMMISSION ANALYSIS

Postal Service Proposal. The Postal Service proposes a classification change that would allow Nonprofit and Classroom subclass mailings to use the Regular rate schedule when such use would reduce the publication's postage.³ Request at 1. A new footnote to the Regular rate schedule also is proposed. It would allow Nonprofit and Classroom publications with less than 10 percent advertising that use the Regular rate schedule to apply the pound rate applicable to editorial matter to the entire publication. *Id.* at 1-2. Corresponding changes in Section 441 (Periodicals) of the current Domestic Mail Classification Schedule (DMCS) and in DMCS Rate Schedule 421 (Periodicals Rates Schedule 421 — Regular Subclass) were submitted with the Request.

According to the Service, the requested classification changes were not intended to reopen for consideration those rates and fees established in Docket No. R97-1, but rather to provide a means of access to the established Regular rates for qualifying Classroom and Nonprofit publications using their current permits.⁴ To this end, subject to the Commission's recommendation and the Board of Governors' approval, the Service announced a refund procedure to address the rate anomaly as of April 9, 1999. The refund procedure is to be comparable to the established "application pending" procedure applicable to mailers applying for a preferred rate authorization, as described in Domestic Mail Manual §§ E270.8.0-9.0. *Ibid.* Nonprofit and Classroom mailers may submit dual mailing statements and apply for a subsequent refund for the difference

³ Even without the proposed classification change, preferred mailers affected by the rate anomaly qualify for the lower Regular rates, if they relinquish their preferred authorization.

⁴ The proposal does not permit splitting of mailings, with both the Regular and preferred rate schedules simultaneously used to calculate postage for parts of a single issue. USPS-T-1 at 4. There are some very limited exceptions to this restriction, as certain preferred rate Periodicals may have a supplemental mailing of a relatively small number of copies of an issue some time after the bulk of that issue's copies have been sent. *Ibid.*, n. 1. Those mailers who experience such a supplemental mailing at least ten days after their bulk mailing may enter the supplemental mailing at whichever rate schedule is less expensive for that mailing, regardless of the rate schedule applied to earlier copies of that issue. *Ibid.*

between the applicable Regular rate and the preferred postage paid on mailings made from April 9, 1999 forward. *Ibid.*, n. 1.

In support of its Request, the Postal Service submits the testimony of Altaf Taufique (USPS-T-1), which explains the rate anomaly and describes the Service's classification proposal. Witness Taufique maintains that the Request has minimal revenue and cost impact and conforms with the applicable standards of the Postal Reorganization Act. USPS-T-1 at 5-7.

Taufique states that a primary cause of the rate anomaly is the unusually low cost coverage of 101 percent for the Periodicals Regular subclass, which was recommended by the Commission in Docket No. R97-1 to mitigate the rate increase for the Regular subclass. *Id.* at 1. This low markup eliminated much of the buffer between the Regular and Nonprofit subclasses. As the Revenue Foregone Reform Act (RFRA) requires that the markup for the preferred subclasses be one-half of the Regular markup, the Nonprofit subclass was subject to a cost coverage of seven-tenths of one percent. *Id.* at 2; 39 U.S.C. § 3626. Further contributing to the anomaly is the larger editorial discount enjoyed by the Regular subclass (0.059 cents for each percent of editorial content, versus 0.044 cents in the Nonprofit and Classroom subclasses). USPS-T-1 at 2.

According to witness Taufique, the Postal Service proposal will cause minimum revenue loss. *Id.* at 5. Qualified preferred mailers already have the option of mailing at the Regular rates, upon completion of the limited, requisite paperwork. *Ibid.* This potential shifting of mail to a lower rate could result in a deviation of no more than approximately \$5 million from the test year revenue estimates made by the Commission in Docket No. R97-1.⁵ *Ibid.* Taufique bases his revenue impact ceiling on the

⁵ The Postal Service subsequently raised this ceiling of annual revenue loss due to the proposal to a slightly higher figure. USPS-LR-1/MC99-3: Revenue Impact Ceiling for Periodicals Rate Anomaly. The increased revenue loss reflects the larger SCF or Delivery Unit discounts available to Regular rate Periodicals which Nonprofit and Classroom Periodicals could potentially enjoy upon switching to the Regular rate schedule. *Ibid.*

assumption that all Nonprofit and Classroom pieces qualified for 5-digit automation and carrier route rates would shift to the lower Regular rates. In reality, Taufique suggests that it is unlikely that all of these pieces — and particularly the heavier pieces with less editorial content — would find the Regular rates lower. *Ibid.*

Taufique projects that the proposal likewise will have minimum impact on Postal Service costs and the allocation of costs to subclasses. He explains that costing methodology distributes carrier in-office and mail processing costs for Periodicals based upon the publication's status — Regular, Nonprofit or Classroom. *Ibid.* As the status of preferred mailers who choose to use Regular rates does not change, the allocation of associated costs also is expected to remain unaffected. *Ibid.* Taufique notes that mail will be entered as Classroom or Nonprofit, regardless of the rate schedule used, so there will be no impact on the reporting of revenues, pieces and weights to subclasses. *Id.* at 6. Thus, commercial transportation costs (with allocation based on weight distribution) and city carrier street-time and rural carrier costs (with allocation based on the distribution between subclasses from the Revenue, Pieces and Weight System) will not be affected by the Service Request. *Ibid.*

Taufique testifies that the Postal Service Request meets the relevant classification criteria of 39 U.S.C. § 3623(c).⁶ The proposed classification change promotes a fair and equitable classification system for all mail (criterion 1) by allowing

⁶ Under 39 U.S.C. § 3623(c), the Commission must consider the following factors in its decision on the establishment of a new classification:

- (1) the establishment and maintenance of a fair and equitable classification system for all mail;
- (2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;
- (3) the importance of providing classifications with extremely high degrees of reliability and speed of delivery;
- (4) the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery;
- (5) the desirability of special classifications from the point of view of both the user and the Postal Service; and
- (6) such other factors as the Commission may deem appropriate.

Nonprofit and Classroom mailers to post their publications at the lower Regular rate without losing their preferred mailer status. *Id.* at 6-7. Criteria 2 (relative value of and justification for special classifications and services of mail) and 5 (desirability of special classifications to both the user and the Postal Service) also are satisfied by the Service Request, as the special Nonprofit and Classroom classifications are maintained while still providing preferred mailers relief from the rate anomaly. *Id.* at 7.

Participants' positions. Participants generally support the Postal Service Request in this limited proceeding as a pragmatic, interim solution to the rate anomaly affecting the preferred Periodicals subclasses until the next omnibus rate case allows a permanent resolution. The Association of American Publishers (AAP) characterizes the Request as "a constructive step in the right direction towards correcting what, by all accounts, is an unintended rate anomaly," while describing the proposed classification change as " ... an appropriate but temporary solution to the underlying rate discrepancies." Reply Brief of the Association of American Publishers (AAP Reply Brief), June 2, 1999, at 1. The OCA likewise supports the Request as suitable relief until "accurate and reliable cost data for all [Periodicals] subclasses" are developed and made available in the next omnibus rate proceeding. Office of the Consumer Advocate Initial Brief, (OCA Brief) May 24, 1999, at 7-8.

NFN and AMMA view the Request as a temporary response to an unintended rate anomaly which is marred by an arbitrary and unfair limitation on the retroactive start date of the accompanying refund procedure. Initial Brief of the National Federation of Nonprofits, (NFN Brief) May 24, 1999; see Brief of the Advertising Mail Marketing Association in Response to Order Granting Postal Service Motion to Proceed without Evidentiary Hearings, (AMMA Brief) May 24, 1999, at 2. This position is shared by several other parties in the proceeding. See AAP Reply Brief at 1; Brief of Alliance of Nonprofit Mailers, (ANM Brief) May 24, 1999, at 1-2.

Commission Analysis. The Commission recommends the Postal Service's proposal for a classification change which addresses the rate anomaly facing certain

preferred mailers in the Periodicals class. The Service proposal satisfies relevant classification criteria and reflects the practical interim solution applied in an analogous situation, in which eligible preferred Library subclass mail has been permitted to use the nonpreferred Special subclass rates when that reduced postage costs. PRC Op. R97-1, para. 5743. The Commission recognizes that the proposal represents a temporary resolution designed to provide nonprofit mailers quick relief from a rate anomaly, and expects the Postal Service and interested mailers to work together to address the anomaly's underlying causes in an effort to develop a long range solution prior to the next omnibus rate proceeding. Participants' responses in this docket suggest that they are generally in accord with this view.

The rate anomaly affecting certain preferred mailers in the Periodicals class is an result of the application of all relevant statutory criteria in conjunction with the balancing of several rate design constraints, as described in detail in the Commission's Opinion and Recommended Decision in Docket No. R97-1. See PRC Op. R97-1, paras. 5783-5801. For Classroom and Nonprofit subclass rates, the Revenue Foregone Reform Act has imposed a further restriction on their cost coverage; consequently, the rate for a preferred subclass is determined by first estimating that subclass's attributable costs, and then applying a RFRA-mandated markup that is half that for the corresponding commercial subclass. In Docket No. R97-1, the Commission determined the current Nonprofit periodicals rates in that manner, with those Nonprofit rates then applied to Classroom mail in an extension of a remedy developed in Docket No. MC96-2. PRC Op. R97-1, para. 5867.

The clear objective of RFRA is to establish the appropriate coverage, or contribution to institutional costs, to apply to preferred subclasses. RFRA does not change the requirement in 39 U.S.C. § 3622(b)(3) that a preferred subclass's attributable costs must be recovered through the rates devised by the Commission. As both the Postal Service and the Commission explained in their March 10, 1999, joint response to the inquiry of Chairman McHugh of the Subcommittee on the Postal

Service, it is difficult to design rates for Nonprofit (and Classroom) periodicals that are uniformly lower than Regular rates when:

... the cost characteristics of these two [Regular and Nonprofit] subclasses are not identical, and Regular and Nonprofit rates are developed separately, each reflecting its own costs based on separate sets of special cost studies relating to the savings for presorting, prebarcoding and drop-shipping.

The Postal Service proposal addressing the Periodicals rate anomaly follows Commission precedent, allowing eligible mailers of a preferred subclass the option of paying the lower rates of a corresponding commercial subclass, while satisfying relevant 39 U.S.C. § 3623(c) classification criteria. Specifically, Nonprofit and Classroom periodicals mailers are able to retain their preferred status while posting their publications at the lower Regular rate, which more fully represents a fair and equitable classification system for all mail (criterion 1). The proposal's maintenance of the special Nonprofit and Classroom classifications while offering preferred mailers relief from the rate anomaly also satisfies Criteria 2 (relative value of and justification for special classifications and services of mail) and 5 (desirability of special classifications to both the user and the Postal Service).

Retroactive Refund Procedure. In conjunction with the proposed classification change, the Postal Service announced initiation of a refund procedure retroactive to April 9, 1999, subject to the Commission's recommendation and the Governors' approval of the change. Request at 2, n. 1. The refund procedure has proven to be a major point of controversy in this docket, engendering much discussion from participants. The issues are two-fold: (1) should the refund procedure be retroactive to January 10, 1999, the date the new rates (and inadvertent rate anomaly) became effective, rather than the Service's chosen date of April 9, 1999; and (2) does the Commission possess the authority to mandate that the postage refunds be issued as of a particular date, or, at the very least, to make such a recommendation?

NFN first raised the retroactive refund matter in its Notice of Intervention, when it contended that the appropriate retroactive start date for the refund procedure is January 10, 1999. NFN Request at 1. At the May 3, 1999 prehearing conference, NFN reiterated its position, requesting that a hearing be conducted on the matter, while conceding that a recent Commission Order held that postage refunds are considered to be a Postal Service operational matter and therefore beyond the Commission's jurisdictional scope. Tr. 1/12-14; Life Time Fitness, Docket No. C98-1, Order No. 1227, January 27, 1999. The Service objected to a hearing on this ground, particularly given the limited nature of the proceeding. Tr. 1/15. The Commission treated the Postal Service objection as a motion to proceed without evidentiary hearings, and asked for responses from interested participants. P.O. Ruling MC 99-3/1 at 2. Three participants replied, offering legal arguments on the matter that have remained virtually constant throughout this docket, and that have garnered support from other parties.

AMMA presents the most detailed argument of participants in favor of the Commission recommending the January 10, 1999 date for retroactive implementation of the refund procedure, which has been adopted at least in part by AAP, ANM and NFN.⁷ See AAP Reply Brief at 1; ANM Brief at 2; NFN Brief. It is AMMA's position that the rates and rate structure which led to the rate anomaly at issue were and are invalid because they are contrary to the precepts of the Postal Reorganization Act of 1970, as amended. AMMA Brief at 2. Specifically, the rates for preferred Periodicals mail do not reflect the reduced postage rates for nonprofit mailers that Congress intended, since for certain publications the preferred rates are higher than the corresponding Regular

⁷ In its Initial Brief, NFN states that it adopts the AMMA arguments on brief as its own. NFN Brief. AAP supports AMMA and ANM's position that mailer refunds be made retroactive to the dates the rates took effect, January 10, 1999. AAP Reply Brief at 1. It maintains that even if the Commission lacks the authority to affirmatively require the Board of Governors to implement the earlier date, it may nonetheless offer comments in support of the January 10, 1999 date. *Id.* at 2. ANM directly concedes that implementation of a date to which mailer refunds should be retroactive is "a management decision beyond the scope of the Commission's jurisdiction." ANM Brief at 1. For that reason, ANM encourages the Board of Governors to authorize such refunds on its own initiative, and further highlights AMMA's point that the

rates. *Id.* at 3-4. As such, the postage refund procedure offered by the Service should be retroactive to January 10, 1999, the date the invalid rates were implemented. *Id.* at 5.

Even if the rates are not held to be invalid *ab initio*, AMMA considers the Postal Service's chosen retroactive effective date of April 9, 1999 for its refund program arbitrary, as it does not reflect the full financial effect of the rate anomaly on the preferred mailers. *Ibid.* Where no rational basis underlies this restriction on refund eligibility, and where the economic impact of offering full refund compensation (backdated to January 10, 1999) would be minimal to the Service, but is significant to preferred mailers, AMMA urges the Commission to support the January 10, 1999 retroactive start date for the postage refund process. *Id.* at 5-6.

In fact, AMMA maintains that the Commission has an affirmative duty to "alert the Governors to the arbitrariness of the Postal Service's selection of a date on which mailers affected by the anomaly may be eligible for refunds." *Id.* at 2. It is conceded that the Commission may be constrained in the manner in which it raises this issue, *i.e.*, the Commission has no authority to order the Governors to implement the preferred earlier date or perhaps even to issue a formal recommendation.⁸ But AMMA distinguishes these constraints from a general restriction that the Commission remain silent "in the face of an arbitrary management decision to limit refunds to a specific time interval." *Id.* at 7. In that instance, principles of fairness and equity, as perceived in the Postal Reorganization Act, obligate the Commission to assess the Postal Service

additional monies involved minimally affect the Postal Service's overall revenue, but significantly impact many nonprofit mailers. *Id.* at 2.

⁸ AMMA cites case law which holds that the Postal Service retains discretion to decide whether or not it will issue refunds even if the overpayment of postage is based on invalid rates. AMMA Brief at 6 (citing *Westwood Promotions, Inc. v. U.S. Postal Service*, 718 F.Supp. 690 (N.D. Ill. 1989); *Combined Comm. Corp. v. U.S. Postal Serv.*, 686 F.Supp. 663, 667-71 (M.D. Tenn. 1988)). Further case law is offered by AMMA for the proposition that to the extent refund issuance is a Postal Service management or operational decision, the Commission lacks authority to issue a formal "recommendation" that refunds be issued, or order that they be provided as of a particular date. *Id.* at 7 (citing *Mail Order Association of America v. U.S. Postal Service*, 2 F.3d 408, 424 (D.C. Cir. 1993)).

proposal in its entirety, including the retroactive refund procedure, and duly notify the Governors of the "arbitrary nature" of the Service's refund program. *Id.* at 8. AMMA notes that the Commission responded in this manner in Docket No. R97-1, when it directly expressed to the Governors its concerns about the Service's intent to raise postage rates before additional revenues were needed to offset *actual* Postal Service expenditures. *Id.* at 7-8.

Both OCA and the Postal Service take exception to AMMA's characterization of the rates at issue as invalid *ab initio*, as well as the proposed resetting of the retroactive refund date. OCA suggests that AMMA is incorrect in its apparent claim that the Revenue Foregone Reform Act mandates that rates of preferred subclasses be established at a level below that of the benchmark commercial subclass. OCA Brief at 3. While one objective of RFRA may be to establish preferred rates that are lower than corresponding commercial rates, RFRA requires that the preferred subclasses recover their attributable costs through the rates devised by the Commission. *Id.* at 4. Thus, preferred rates could be higher than their commercial counterparts and still be valid under RFRA, if their unit attributable costs significantly exceed those of the Regular subclass. *Id.* at 3-4. The Postal Service likewise refutes AMMA's contention that the rates are invalid, adding that the rates properly reflect the application of all relevant statutory criteria (including RFRA provisions), and a balancing of several rate design constraints. Reply Brief of the United States Postal Service (Postal Service Reply Brief), June 2, 1999, at 2. Moreover, only a very limited number of Nonprofit and Classroom Periodicals are subject to higher postage when using preferred rates versus the Regular rates. *Id.* at 3.

OCA and the Postal Service also generally are in accord about the effective date of the retroactive refunds, and the Commission's lack of authority to mandate or even formally recommend an alternative date. See OCA Brief at 7; Postal Service Reply Brief at 3-5. OCA has suggested that the two-month interim period between the Service's first notice of the rate anomaly and the date of this docket's filing is quite

reasonable, particularly in light of the Postal Service's efforts to solicit interested parties' comments on the matter prior to filing. OCA Response at 3. In its Initial Brief, OCA further recognizes the Commission's Life Time Fitness opinion to stand for the proposition that the Commission lacks jurisdictional authority in the matter of postage refunds. OCA Brief at 7.

The Postal Service takes this argument one step further; it maintains that the refund procedure is not part of the Commission decision, but rather is "based on the eligibility of preferred mailers for both preferred and Regular rates, subject to appropriate [Postal Service] administrative procedures." Postal Service Reply Brief at 4-5. As such, Commission comments on the refund process in this recommended decision are "neither necessary nor appropriate." *Id.* at 5.

The Commission appreciates some participants' view that the refund procedure should be retroactive to the January 10, 1999, date preferred Periodicals mailers became subject to the rate anomaly. However, it should be borne in mind that the Board of Governors also is quite cognizant of the problem and its ramifications, as *both* the Board of Governors and the Commission responded to Chairman's McHugh's letter on the matter. This opinion further serves to highlight the issue in its summary of participants' remarks, as well as participants' acknowledgement that the Commission possesses no authority to direct the Postal Service to issue refunds as of a certain date. Under these circumstances, there appears to be no need for additional comment by the Commission on the appropriate retroactive start date of the Postal Service refund procedure.

AMMA's steadfast contention that the rates for the Periodicals Nonprofit and Classroom subclasses are invalid *ab initio* due to the rate anomaly *does* merit Commission comment. The Commission rejects AMMA's argument that the rates at issue are unlawful. These rates are a result of the appropriate application of all relevant statutory criteria in conjunction with the balancing of several rate design constraints. The rates comply with the RFRA cost coverage requirements delineated in 39 U.S.C.

§ 3626, and, were not challenged in R97-1 by any party pursuant to the applicable judicial review provisions of 39 U.S.C. § 3628.

Because of the complexities of postal rate design, rate anomalies sometimes occur. But an anomalous rate is not by definition an unlawful rate. Having made that point, the Commission still strives to eliminate such rate anomalies wherever possible. In this instance, the Postal Service's classification proposal effectively provides interim relief to those preferred mailers in the Periodicals class affected by the rate anomaly at issue. Accordingly, the Commission recommends the Postal Service's Request.

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman
W.H. "Trey" LeBlanc III, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway,
and George A. Omas

Periodicals Classification Change

Docket No. MC99-3

RECOMMENDED DECISION

(Issued June 23, 1999)

The Commission, having considered the record of this proceeding, has issued its Opinion thereon, which is attached and made a part hereof; wherefore,

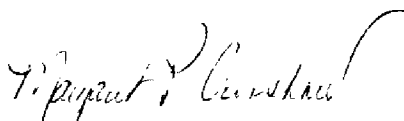
IT IS ORDERED:

That the Commission's Opinion be transmitted to the Governors of the Postal Service and that the Governors thereby be advised that:

1. The amendments to the Rate Schedule set forth in Appendix One are in accordance with the policies of title 39 of the United States Code and the factors set forth in § 3622(b) thereof; and they are recommended to the Governors for approval.
2. The amendments to the Domestic Mail Classification Schedule set forth in Appendix Two are in accordance with the policies of title 39 of the United State Code and the factors set forth in § 3623(c) thereof; and they are hereby recommended to the Governors for approval.

By the Commission.

(S E A L)


Margaret P. Crenshaw
Secretary

RECOMMENDED CHANGES IN RATE SCHEDULE

The following changes represent the rate schedule recommendations of the Postal Rate Commission in response to the Postal Service's Docket No. MC99-3 Request. Proposed additions are underlined.

**PERIODICALS
RATE SCHEDULE 421
Regular Subclass^{1, 2}**

	Postage Rate Unit	Rate ³ (cents)
Per Pound		
Nonadvertising Portion:	Pound	16.1
Advertising Portion:		
Delivery Office ⁴	Pound	15.5
SCF ⁵	Pound	17.8
1&2	Pound	21.5
3	Pound	22.9
4	Pound	26.3
5	Pound	31.6
6	Pound	37.1
7	Pound	43.8
8	Pound	49.5
Science of Agriculture		
Delivery Office	Pound	11.6
SCF	Pound	13.3
Zones 1&2	Pound	16.1
Per Piece		
Less Nonadvertising Factor ⁶		5.9
Required Preparation ⁷	Piece	29.4
Presorted to 3-digit	Piece	25.3
Presorted to 5-digit	Piece	19.7
Presorted to Carrier Route	Piece	12.2
Discounts:		
Prepared to Delivery Office ⁴	Piece	1.3
Prepared to SCF ⁵	Piece	0.7
High Density ⁸	Piece	1.9
Saturation ⁹	Piece	3.7
Automation Discounts for Automation Compatible Mail ¹⁰		
From Required:		
Prebarcoded letter size	Piece	6.2
Prebarcoded flats	Piece	4.6
From 3-Digit:		
Prebarcoded letter size	Piece	4.7
Prebarcoded flats	Piece	3.9
From 5-Digit:		
Prebarcoded letter size	Piece	3.5
Prebarcoded flats	Piece	2.9

SCHEDULE 421 NOTES

- ¹ The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, non-profit, and classroom periodicals.
- ² Rates do not apply to otherwise regular rate mail that qualifies for the Within County rates in Schedule 423.2.
- ³ Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
- ⁴ Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.
- ⁵ Applies to mail delivered within the SCF area of the originating SCF office.
- ⁶ For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
- ⁷ Mail not eligible for carrier-route, 5-digit or 3-digit rates.
- ⁸ Applicable to high density mail, deducted from carrier route presort rate.
- ⁹ Applicable to saturation mail, deducted from carrier route presort rate.
- ¹⁰ For automation compatible mail meeting applicable Postal Service regulations.
- ¹¹ Not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.

RECOMMENDED CHANGES IN THE DOMESTIC MAIL CLASSIFICATION SCHEDULE

The following changes represent the changes to the Domestic Mail Classification Schedule recommended by the Postal Rate Commission in response to the Postal Service's Docket No. MC99-3 Request. Proposed additions are underlined.

**PERIODICALS
CLASSIFICATION SCHEDULE**

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440 POSTAGE AND PREPARATION

- 441 **Postage.** Postage must be paid on Periodicals class mail as set forth in section 3000. When the postage computed for a particular issue using the Nonprofit or Classroom rate schedule is higher than the postage computed using the Regular rate schedule, that issue is eligible to use the Regular rate schedule. For purposes of this section, the term issue is subject to certain exceptions related to separate mailings of a particular issue, as specified by the Postal Service.

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